S.B. Civil Writ Petition NO.5913/2004

Suresh Kumar & Ors

vs

UIT, Udaipur & Ors.

DATE OF ORDER : - 12.5.2005.

HON'BLE MR. PRAKASH TATIA,J.

Mr.JK Bhaiya, for the petitioner.
Mr.Lalit Kawadia, for the respondent

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Heard learned counsel for the parties.

The petitioner is aggrieved against the order dated 31st July, 2003 by which the trial court dismissed the petitioner's application filed under Section 65/66 of the Evidence Act by which petitioner wanted to produce secondary evidence.

The petitioner tried to summon the relevant 'Patta' from the defendants, but when that was not produced by the defendants, the petitioner submitted application for permission to produce the secondary evidence about 'Patta' for which petitioner placed on record the copy of the 'Patta'. The trial court dismissed the petitioner's application only on the ground that defendants in their written

statement submitted that the alleged 'Patta' is forged one and that is the only ground for rejection of the application. The order of the trial court is absolutely perverse and against the law inasmuch as the trial court without affording any opportunity to the petitioner to prove the issuance and existence of the 'Patta' in question, rejected the application. The trial court treated the contention of the defendants in the written statement as gospel truth. If the finding recorded by the trial court in the impugned order dated 31st July, 2003 is entertained then that will lead to a conclusion that 'Patta' in question is forged one without there being consideration of any evidence of any of the party by the trial court.

The trial court also failed to appreciate how the applications under Section 65/66 of the Evidence Act are required to be considered and decided. The trial court could have directed for holding an enquiry about the existence of the original 'Patta' and about the lost of the 'Patta' and could have examined whether the copy of the 'Patta' produced is a copy, which can be permitted to be taken on record as evidence in the forum of secondary evidence.

In view of the above, the writ petition of the petitioner deserves to be allowed, hence allowed. The impugned order dated 31st July, 2003 is set aside. The trial court is directed to decide the application of the

petitioner filed under Section 65/66 of the Evidence Act in accordance with law. The stay order granted by this Court has become infructuous. Hence, the stay petition is dismissed.

(Prakash Tatia), J.

c.p.goyal/-